

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.**

SECOND APPEAL NO.604 OF 1985

1. Sadashiv Dattu Chavan and ors., .. Appellants.
(Orig.Defts)

Vs

1. Raosaheb Kallappa Desai and ors .. Respondents
(Orig.Plffs)

Mr S.A.Rajeshirke i/b Mr N.D.Hombalkar, for the
appellants.

CORAM : D.B.BHOSALE, J.
DATE : 15.1.2007

PC:

1. Heard the learned counsel for the appellants.

2. This appeal by the original defendants is directed against the concurrent findings recorded by the courts below by which a suit filed by the respondents-plaintiffs for injunction simplicitor has been decreed. The respondents prayed for perpetual injunction restraining the appellants/defendants from interfering with the respondents-plaintiffs right to take water from the well situate in the defendants land, Block No.349 at village Minache, Tahsil Hatkanangale, District-Kolhapur. Both the courts below have concurrently held that the plaintiffs have one-half share in the suit well and that their right in respect

of the suit well is proprietary. The contention of the defendants that they have acquired the title in respect of the suit well since the plaintiffs did not use their right to take water continuously for 12 years has been negatived by the courts below. Having regard to the evidence on record led by the parties the courts below have further concurrently held that the defendants have failed to prove that the plaintiffs have lost their easementary right to flow water through the channel running across their land as it has not been used by them for 20 years. During pendency of this appeal, no interim order of whatsoever nature was passed in favour of the appellants. I perused the judgments of the courts below and I am satisfied that the documents produced on record by the parties are sufficient to hold that the right of the plaintiffs in the suit well is of proprietary nature as held by the courts below and the suit as it stands filed by the plaintiffs, was maintainable in law. No substantial question of law has been raised by the learned counsel for the appellants. Keeping that in view and considering the concurrent findings of facts and as I find that there is sufficient material on record to sustain those findings, this second appeal deserves no interference. The second appeal, therefore, fails and is dismissed as such. No order as to costs.

(D . B . BHOSALE , J .)